

No. 16452

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

ERNEST KING BRAMBLETT,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

BRIEF FOR APPELLEE.

LAUGHLIN E. WATERS,
United States Attorney,

RICHARD A. LAVINE,
Assistant U. S. Attorney,
Chief of Civil Division,

JAMES R. DOOLEY,
Assistant U. S. Attorney,
600 Federal Building,
Los Angeles 12, California,
Attorneys for Appellees.

FILED

OCT - 9 1959

PAUL P. O'BRIEN, CLERK

TOPICAL INDEX

	PAGE
Jurisdiction	1
Statement of the case.....	2
Questions presented	5
Statutes involved	6
Argument	8

I.

The judgment of the District Court is supported by sufficient evidence	8
A. Scope of appellate review.....	8
B. Appellant's purported employment of Margaret M. Swanson	9
1. Appellant's liability under the False Claims Act is conclusively established by his prior conviction....	9
2. Appellant's liability, both under the False Claims Act and for restitution was established by evidence presented at trial.....	10
C. Appellant's purported employment of Olga Hardaway..	16
D. Appellant's purported employment of Lillian South.....	21
E. Other evidence of a general scheme by appellant to divert the clerk-hire allowance to his own use.....	22
F. The clerk-hire allowance belongs to the people of the United States	25

II.

The Government was not barred by statutes of limitations from obtaining the relief granted by the District Court.....	26
A. Relief under the False Claims Act.....	26
B. Restitution of monies wrongfully received.....	28
Conclusion	29

TABLE OF AUTHORITIES CITED

CASES	PAGE
Austin v. United States, 125 F. 2d 816.....	10
Belvin v. United States, 260 Fed. 455.....	25
Bramblett v. United States, 231 F. 2d 489, cert. den. 350 U. S. 1015	27
Burnap v. United States, 252 U. S. 512.....	25
Castle v. Bullard, 64 U. S. 172.....	23
Connolly v. Gishwiller, 162 F. 2d 428.....	8
Dickinson v. Burnham, 197 F. 2d 973, cert. den. 344 U. S. 875	8
Federal Savings & Loan Ins. Corp. v. First National Bank, 164 F. 2d 929.....	9
Knudsen v. Domestic Utilities Mfg. Co., 264 Fed. 470.....	23
Lew Wah Fook v. Brownell, 218 F. 2d 924, cert. den. 349 U. S. 944.....	8
Local 167 v. United States, 291 U. S. 293.....	10
Milgram v. Loew's, Inc., 192 F. 2d 579, cert. den. 343 U. S. 929	8
Paramount Pest Control Service v. Brewer, 177 F. 2d 564.....	8, 9
Pope v. Commissioner of Internal Revenue, 138 F. 2d 1006.....	26
Sacramento Suburban Fruit Lands Co. v. Elm, 29 F. 2d 233.....	23
Shutt v. United States, 218 F. 2d 10.....	29
State v. Eaton, 133 P. 2d 588, 114 Mont. 199.....	26
Tool Company v. Norris, 2 Wall. (69 U. S.) 45.....	26
Union Producing Co. v. White, 157 F. 2d 254, cert. den. 329 U. S. 792.....	8
United States v. Accardo, 113 Fed. Supp. 783, aff'd 208 F. 2d 632, cert. den. 347 U. S. 952.....	10
United States v. Ben Grunstein & Sons Co., 127 Fed. Supp. 907	10
United States v. Borin, 209 F. 2d 145, cert. den. 348 U. S. 821	29

	PAGE
United States v. Bower, 95 Fed. Supp. 19.....	10
United States v. Calvatore, 140 Fed. Supp. 470.....	10
United States v. Comstock Extension Mining Co., 214 F. 2d 400	8
United States v. First Nat. Bank of Prague, 124 F. 2d 484.....	29
United States v. Grant, 237 F. 2d 511.....	25
United States v. Guzzone, 168 Fed. Supp. 711.....	10
United States v. Gypsum Co., 333 U. S. 364.....	8
United States v. Hicks, 137 Fed. Supp. 564.....	29
United States v. Mouat, 24 U. S. 303.....	25
United States v. Schneider, 139 Fed. Supp. 826.....	10
United States v. Scott, 139 Fed. Supp. 921.....	29
United States v. Silliman, 167 F. 2d 607, cert. den. 335 U. S. 825	29
United States v. Smith, 124 U. S. 525.....	25
United States v. Summerlin, 310 U. S. 414.....	29
United States v. Utica Meat Co., 135 Fed. Supp. 834.....	29
United States v. Wurts, 303 U. S. 414.....	29
United States v. Yellow Cab Co., 338 U. S. 338.....	8
Worthington v. United States, 64 F. 2d 936.....	23

RULES

Federal Rules of Civil Procedure, Rule 52(a).....	8
---	---

STATUTES

United States Code, Title 2, Chap. IV, Secs. 60(a)-92(c).....	12
United States Code, Title 2, Sec. 60g.....	25
United States Code, Title 2, Sec. 92.....	25
United States Code, Title 18, Sec. 1001.....	9, 28
United States Code, Title 28, Sec. 1291.....	2
United States Code, Title 28, Sec. 1345.....	2, 7

iv.

PAGE

United States Code, Title 31, Sec. 231.....	1, 6, 28
United States Code, Title 31, Sec. 232(A).....	1, 6
United States Code, Title 31, Sec. 235.....	4, 7, 27
United States Revised Statutes, Sec. 3490.....	6
United States Revised Statutes, Sec. 3491.....	7
United States Revised Statutes, Sec. 3494.....	7
United States Revised Statutes, Sec. 5438.....	6

TEXTBOOKS

67 Corpus Juris Secundum, Secs. 1-3.....	26
67 Corpus Juris Secundum, Sec. 6, pp. 117-118.....	26

No. 16452
IN THE
United States Court of Appeals
FOR THE NINTH CIRCUIT

ERNEST KING BRAMBLETT,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

BRIEF FOR APPELLEE.

Jurisdiction.

Appellee brought action in the court below seeking forfeitures and damages under the False Claims Act, Title 31, United States Code, Section 231, *et seq.* and restitution of monies wrongfully received [Tr. 2-4; 15-20; 139-150; 175].¹

The District Court had jurisdiction of appellant's action under the False Claims Act pursuant to the provisions of Title 31, United States Code, Section 232(A). The District Court had jurisdiction of appellant's action for resti-

¹"Tr" indicates references to the Clerk's Transcript of Record, which apparently is being considered in its original form. "R" indicates references to Reporter's Transcript of Proceedings. "Ex" or "Exs" refers to exhibits received in evidence, sometimes followed by the page numbers of the exhibit. "Br" indicates references to Appellant's Opening Brief.

tution of monies wrongfully received pursuant to the provisions of Title 28, United States Code, Section 1345.

The judgment of the court below [Tr. 374] being a final decision, this court has jurisdiction of an appeal from such decision pursuant to Title 28, United States Code, Section 1291.

Statement of the Case.

Appellee brought action in the court below against appellant and his wife, Lois Bramblett,² seeking forfeitures and damages under the False Claims Act and restitution of monies wrongfully received [Tr. 2-4; 15-20; 139-150; 175]. After trial, the District Court found, *inter alia*, that while a member of Congress appellant contrived a fraudulent scheme whereby he represented to the Disbursing Officer of the House of Representatives that he had employed Margaret M. Swanson, Olga Hardaway, and Lillian South to work as his clerks; when he knew at the time, and continued to know during the periods that these persons remained on the payroll of the Disbursing Officer, that they were not to work as his clerks as represented, during all or a part of the periods for which salary checks were issued them by the Treasurer of the United States, but were to be placed on the payroll for the purpose of diverting all or a part of their salary payments to appellant's own use [Finding of Fact III, Tr. 365].

The court below found that in furtherance of this fraudulent scheme appellant submitted to the Disbursing Office of the House of Representatives various Clerk-Hire Allowance forms, naming Margaret M. Swanson,

²Appellant's wife, Lois Bramblett, was added as a party defendant in the Second Amended Complaint [Tr. 139-150].

Olga Hardaway, and Lillian South as clerks and that the submission of the initial Clerk-Hire Allowance form for each of these persons caused such person to be placed on the payroll of the Disbursing Office and entitled her to receive the salary designated on the form, which salary continued until it was in some manner revoked or modified by appellant [Findings of Fact IV and V, Tr. 365-366].

With respect to Margaret M. Swanson, the District Court found, among other things, that appellant continued her on the payroll of the Disbursing Office of the House of Representatives from September 1, 1949 through December 31, 1950 as his clerk; that during this period Mrs. Swanson performed no work whatever for appellant as his clerk, as appellant well knew; and that the proceeds of all her salary checks in the total amount of \$7,647.12 were transferred to appellant for his own use [Finding of Fact VI, Tr. 366-367].

With respect to Olga Hardaway, the District Court found, among other things, that appellant continued her on the payroll of the Disbursing Office of the House of Representatives from November 1, 1950 through November 30, 1951 as his clerk; that during the months of November, 1950, December, 1950, and January, 1951, Mrs. Hardaway performed no work for appellant as his clerk; that commencing about February 1, 1951, she commenced performing various miscellaneous duties for appellant, in addition to her full-time, salaried employment with a newspaper, the Pacific Grove Tribune; and that some of her salary checks or the proceeds thereof in the amount of \$934.96 were transferred to appellant for his own use [Finding of Fact X, Tr. 368].

With respect to Lillian South, the District Court found, among other things, that appellant continued her on the payroll of the Disbursing Office of the House of Representatives from January 3, 1947 through December 31, 1947 as his clerk; that from January 3, 1947 until about August 1, 1947 Mrs. South performed no work for appellant as his clerk, although occasionally she assisted her own husband in editing speeches and entertained constituents; and that the proceeds of some of her salary checks, in the amount of \$570 were transferred to appellant for his own use [Finding of Fact XIV, Tr. 369-370].

The court below found that appellant presented and caused to be presented false, fictitious, and fraudulent claims with respect to his purported employment of Margaret M. Swanson and Olga Hardaway [Findings of Fact VII and XI; Conclusions of Law III and IV, Tr. 367, 368-369, 371]; that such claim with respect to Mrs. Swanson was a continuing one, commencing when the Clerk-Hire Allowance form for her was submitted and continuing until her name was removed from the payroll [Finding of Fact VII, Tr. 367]; and that during the periods that Margaret M. Swanson, Olga Hardaway, and Lillian South were on the payroll of the Disbursing Office of the House of Representatives, appellant wrongfully, illegally, and fraudulently received proceeds from their respective salary checks, monies which belonged to the Government of the United States [Findings of Fact IX, XII, and XV, Tr. 367-368, 369, 370].

The District Court concluded that appellee was not barred by the limitations contained in Title 31, United States Code, Section 235, from recovering forfeitures against appellant pursuant to the provisions of the False Claims Act by reason of his purported employment of

Margaret M. Swanson and Olga Hardaway; that appellee was barred by said limitations statute from recovering from appellant pursuant to the provisions of the False Claims Act, double the amount of damages which the United States sustained before November 1, 1950, the original complaint having been filed on October 31, 1956; but that appellee was not barred by said limitations statute from recovering against the appellant pursuant to the provisions of the False Claims Act double the amount of damages which the United States sustained on and after November 1, 1950 [Conclusions of Law V, VI, and VII; Tr. 371-372]. The District Court concluded that appellee was not barred by any limitations statute from obtaining restitution from the appellant of monies wrongfully received by him at any time [Conclusion of Law IX, Tr. 372].

Judgment was entered in favor of the appellee and against appellant in the sum of \$15,008.32, plus interest on the sum of \$6,725.84 at the rate of 7% per annum from January 1, 1951 until the day of entry of judgment, plus interest on the sum of \$570 from January 1, 1948 until the day of entry of judgment [Tr. 374]. Judgment was entered in favor of appellant's wife [Tr. 374].

Questions Presented.

1. Is the judgment of the District Court supported by sufficient evidence?

2. Was the Government barred by statutes of limitations from obtaining the relief granted by the District Court?

Statutes Involved.

Title 31, United States Code, Section 231, provides in part:

“Any person not in the military or naval forces of the United States, or in the militia called into or actually employed in the service of the United States, who shall make or cause to be made, or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, any claim upon or against the Government of the United States, or any department or officer thereof, knowing such claim to be false, fictitious, or fraudulent, * * *

“* * * shall forfeit and pay to the United States the sum of \$2,000, and, in addition, double the amount of damages which the United States may have sustained by reason of the doing or committing such act, together with the costs of suit; and such forfeiture and damages shall be sued for in the same suit.”³

Title 31, United States Code, Section 232(A), provides:

“(A) The several district courts of the United States, the several district courts of the Territories

³Since the Code provisions have not been enacted into positive law, pertinent portions of Sections 3490 and 5438 of the Revised Statutes are quoted below:

“R. S. 3490. Any person not in the military or naval forces of the United States, or in the militia called into or actually employed in the service of the United States, who shall do or commit any of the acts prohibited by any of the provisions of section fifty-four hundred and thirty-eight, Title ‘Crimes,’ shall forfeit and pay to the United States the sum of two thousand dollars, and, in addition, double the amount of damages which the United States may have sustained by reason of the

of the United States, within whose jurisdictional limits the person doing or committing such act shall be found, shall wheresoever such act may have been done or committed, have full power and jurisdiction to hear, try, and determine such suit.”⁴

Title 31, United States Code, Section 235, provides:

“Every such suit shall be commenced with six years from the commission of the act, and not afterward.”⁵

Title 28, United States Code, Section 1345, provides:

“Except as otherwise provided by Act of Congress, the district courts shall have original jurisdiction of all civil actions, suits or proceedings commenced by the United States, or by any agency or officer thereof expressly authorized to sue by Act of Congress.”

doing or committing such act, together with the costs of suit; and such forfeiture and damages shall be sued for in the same suit.”

“R. S. 5438. Every person who makes or causes to be made, or presents or causes to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, any claim upon or against the Government of the United States, or any department or officer thereof, knowing such claim to be false, fictitious, or fraudulent, * * * shall be imprisoned at hard labor for not less than one nor more than five years, or fined not less than one thousand nor more than five thousand dollars.”

⁴Section 3491, Revised Statutes.

⁵Section 3494, Revised Statutes.

ARGUMENT.

I.

THE JUDGMENT OF THE DISTRICT COURT IS SUPPORTED BY SUFFICIENT EVIDENCE.

A. Scope of Appellate Review.

Appellant's attack upon the sufficiency of the evidence based principally upon his attempt to impugn the credibility of witnesses for the Government (Br. 9-20) must be appraised in the light of Rule 52(a), Federal Rules of Civil Procedure, which provides *inter alia* that "Findings of Fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses." (*United States v. Yellow Cab Co.*, 338 U. S. 338 (1949); *Lew Wah Fook v. Brownell*, 218 F. 2d 924 (9th Cir. 1955), cert. den. 349 U. S. 944; *Dickinson v. Burnham*, 197 F. 2d 973 (2d Cir. 1952), cert. den. 344 U. S. 875; *Milgram v. Loew's, Inc.*, 192 F. 2d 579 (3rd Cir. 1951), cert. den. 343 U. S. 929; *Paramount Pest Control Service v. Brewer*, 177 F. 2d 564, 567 (9th Cir. 1949); *Connolly v. Gishwiller*, 162 F. 2d 428 (7th Cir. 1947); *Union Producing Co. v. White*, 157 F. 2d 254 (5th Cir. 1946), cert. den. 329 U. S. 792; see also, *United States v. Gypsum Co.*, 333 U. S. 364, 394-395 (1948); *United States v. Comstock Extension Mining Co.*, 214 F. 2d 400, 402-403 (9th Cir. 1954).)

In *Lew Wah Fook v. Brownell*, *supra*, Judge Stephens, after quoting from *United States v. Gypsum Co.*, *supra*, that "A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court is left with

a definite and firm conviction that a mistake has been committed,” went on to declare (p. 925):

“* * * This simple statement *does not convert the appellate tribunals into fact finding de novo trial courts*. The *presumption of correctness* of the trial court, the *view of the witnesses* and the *live feel of the open forum* are all ingredients of the compound which we may adjudge as valid or ‘clearly erroneous.’
* * *” (Emphasis added.)

And in *Paramount Pest Control Service v. Brewer, supra*, this Court, quoting from *Federal Savings & Loan Ins. Corp. v. First National Bank*, 164 F. 2d 929 (8th Cir. 1947), observed (p. 567):

“‘We are *not at liberty to substitute our judgment for that of the trial court* and on appeal *that view of the evidence must be taken which is most favorable to the prevailing party*, and if, when so viewed, the findings are supported by substantial competent evidence they should be sustained.’” (Emphasis added.)

B. Appellant’s Purported Employment of Margaret M. Swanson.

I. Appellant’s Liability Under the False Claims Act Is Conclusively Established by His Prior Conviction.

On June 15, 1955 appellant was convicted in the United States District Court for the District of Columbia for violation of Title 18, United States Code, Section 1001; and on January 19, 1956 this conviction was affirmed by the United States Court of Appeals for the District of Columbia Circuit. Certiorari was denied by the Supreme Court of the United States on April 9, 1956. At the time

of trial no Petition for Rehearing in the Supreme Court had been filed by appellant, and the time for filing such a petition had then expired [Pre-Trial Conference Order, Tr. 238; Ex. 41].

A judgment of conviction operates conclusively upon the same issues in a civil case where the parties are the same (*Local 167 v. United States*, 291 U. S. 293, 298-299 (1934); *Austin v. United States*, 125 F. 2d 816 (7th Cir. 1943); *United States v. Guzzone*, 168 Fed. Supp. 711 (E. D. N. Y. 1958); *United States v. Salvatore*, 140 Fed. Supp. 470 (E. D. Penn. 1956); *United States v. Schneider*, 139 Fed. Supp. 826 (S. D. N. Y. 1956); *United States v. Ben Grunstein & Sons Co.*, 127 Fed. Supp. 907 (D. C. N. J. 1955); *United States v. Accardo*, 113 Fed. Supp. 783 (D. C. N. J. 1953), affirmed 208 F. 2d 632, cert. den. 347 U. S. 952; *United States v. Bower*, 95 Fed. Supp. 19 (E. D. Tenn. 1951)).

In the case at bar the issues underlying appellant's presentation of a false claim with respect to Margaret M. Swanson are the same as those set forth in Counts One through Seven of the Indictment relating to appellant's conviction [see Ex. 41]. These issues therefore were conclusively settled and adjudicated by appellant's conviction, except as to the amount of damages sustained by the United States.

2. Appellant's Liability, Both Under the False Claims Act and for Restitution Was Established by Evidence Presented at Trial.

Appellant's liability with respect to his purported employment of Margaret M. Swanson was established at trial primarily through the testimony of the following witnesses: Irving W. Swanson, husband of Margaret M.

Swanson [R. 221-312]; Margaret M. Swanson [R. 312-342]; John S. Pixley, employee of the Old Dominion Bank [Ex. 47, pp. 106-136]; and Ruth Dickson, former employee of appellant [R. 345-351].⁶ Their testimony coupled with the exhibits received in evidence presents a picture of clear liability.

During August of 1949 Irving W. Swanson, who was then employed as Assistant Reading Clerk for the House of Representatives [R. 222] had a conversation with appellant in the latter's office [R. 224-227]. The two men discussed the fact that appellant was in a "close" district, which might go either Democratic or Republican, and that some people were making a charge of nepotism because Mrs. Bramblett was on his payroll [R. 224-227]. During the course of the conversation it was suggested that Mrs. Swanson be placed on appellant's payroll in lieu of Mrs. Bramblett. Mr. Swanson said that he would ask his wife about it [R. 226-227].

After talking to his wife Mr. Swanson had a second conversation with appellant on the floor of the House [R. 228-229], during which Mr. Swanson told appellant that

⁶The Pre-Trial Order provided that the testimony of these witnesses as contained in the transcript of proceedings in *United States v. Ernest K. Bramblett*, No. 971-53, might be read into evidence in the present action [Tr. 238-239]. Also included in this provision of the Pre-Trial Order was the testimony of Harry Newlin Megill, Administrative Assistant to the Clerk of the House of Representatives [Ex. 47, pp. 51-94] and William Richard Bonsell, Sergeant-at-Arms of the House of Representatives [Ex. 47, pp. 97-106]. The testimony of Mr. Swanson, Mrs. Swanson, and Mrs. Dickson was read into evidence at trial [R. 221-342; 345-351], while the testimony of the other three witnesses was received in evidence as Exhibit 47 [R. 343-344].

Mrs. Swanson would go on appellant's payroll in lieu of Mrs. Bramblett, and that they "would turn the full amount of Mrs. Bramblett's salary back to her" [R. 228].

Thereafter, appellant gave Mr. Swanson some "hiring papers"⁷ [Exs. 18, 22, and 48] in blank and a Power of Attorney [Ex. 29] for Mrs. Swanson to sign. Mr. Swanson took these documents home, his wife signed them and he brought them back and gave them to appellant [R. 233-234]. The Power of Attorney authorized the Old Dominion Bank, Arlington, Va., *inter alia*, to collect checks drawn on the Treasurer of the United States payable to Mrs. Swanson [see Ex. 29].

Mrs. Swanson was placed on appellant's payroll commencing September 1, 1949, replacing Mrs. Bramblett, and she remained on his payroll through December 31, 1950 [see Ex. 48]. As salary checks were issued in the name of Mrs. Swanson, they were sent directly to the Old Dominion Bank and deposited in the joint checking account of Irving W. or Margaret M. Swanson. On the date of the deposit or shortly thereafter, Mr. Swanson usually withdrew by countercheck the amount of the deposit or slightly in excess thereof, gave the amount of the salary check in cash to appellant, and kept the amount of the ex-

⁷The employment of clerks by Members of the House of Representatives generally is covered by the testimony of Harry Newlin Megill, Administrative Assistant to the Clerk of the House of Representatives [Ex. 47, pp. 51-94]. A summary of this testimony is contained in the record [Tr. 275-276]. See also Title 2, U. S. C., Chapter IV, Sections 60(a)-92(c).

cess, if any, for his personal use. References to the record concerning this procedure, and the deviations therefrom, can better be depicted through reference to the following chart⁸ which was compiled from exhibits received in evidence:

Date of Salary Checks	Amount of Salary Checks	Date of Deposits	Date of Withdrawals	Amount of Withdrawals	Given to Mr. Bramblett	Retained for Personal Use
9-30-49	\$494.58	10- 3-49(5)	10-11-49	\$ 494.58	\$ 494.58	None
10-31-49	494.58	11- 1-49(7)	None			
11-30-49	479.64	12- 1-49(9)	None			
12-20-49	479.64	12-22-49(11)	1- 3-50	1,500.00	1,453.86	\$46.14
1-31-50	479.64	2- 1-50(12)	2- 3-50	525.00	479.64	45.36
2-28-50	479.64	3- 1-50(15)	None			
3-31-50	479.64	4- 1-50(16)	4- 3-50	500.00	479.64	20.36
4-28-50	479.64	4-29-50(19)	5- 2-50	500.00	479.64	20.36
5-31-50	479.64	6- 1-50(20)	6- 8-50	500.00	479.64	20.36
6-30-50	479.64	7- 3-50(23)	7- 7-50	550.00	479.64	70.36
7-31-50	479.64	8- 2-50(25)	8- 2-50	525.00	479.64	45.36
8-31-50	479.64	9- 1-50(27)	None			
9-29-50	479.64	9-30-50(29)	None			
10-31-50	460.64	11- 2-50(31)	11- 9-50	1,440.00	1,440.00	None
11-30-50	460.64	12- 2-50(33)	12- 5-50	500.00	460.64	39.36
12-20-50	460.64	12-22-50(36)	1- 3-51	500.00	460.64	39.36

⁸In the above chart the dates and amounts of the salary checks may be verified by examination of Ex. 32, certified photostats of cancelled checks, Margaret M. Swanson, payee. The dates of deposits may be verified either from the deposit slips [Ex. 37] or from the ledger sheet [Ex. 39]. The deposit slips, appellee believes, affords a simpler means of verification. While each deposit slip was not separately marked at trial; each bears a separate number in script. The number on the deposit slip in question is shown in the above chart. The dates and amounts of withdrawals may also be determined from the ledger sheet [Ex. 39]; however, since withdrawal was in all instances except one [Ex. 38-I] by countercheck, the dates on the counterchecks [Exs. 38-A through H and Exs. 38-J through K], except in that one instance, are the same as the date on the ledger sheet. Comparison may be simplified by reference to the List of Exhibits contained in the record [Tr. 321-322].

With respect to salary check dated September 30, 1949⁹ shown on the above chart, Mr. Swanson withdrew the exact amount of the deposit by countercheck [Ex. 38-A] and turned the cash over to appellant [R. 241-246]. For salary checks dated October 31, 1949 and November 30, 1949, however, the customary procedure was not followed because Congress having adjourned, Mr. Swanson was out of town and could not make repayment [R. 247-248]. However, in January, when Mr. Swanson returned, he withdrew by countercheck the sum of \$1500 [Ex. 38-B], gave appellant the sum of \$1453.86 in cash, covering the salary checks for October, November, and December, 1949, and retained the balance for his personal use [R. 248-250].

Mr. Swanson followed the usual procedure with respect to salary check dated January 31, 1950 [R. 250-251]. However, for check dated February 28, 1950 there was a deviation [R. 251-252]. Mr. Swanson, after computing the increased amount of his income taxes occasioned by the salary being paid into his account deducted this amount from the February check and gave appellant the remainder in cash R. 252-254]. No countercheck was used [R. 254].

The customary procedure was followed for salary checks dated March 31, 1950 [R. 254-256; Ex. 38-D], April 28, 1950 [R. 256-257; Ex. 38-E], May 31, 1950 [R. 257-259; Ex. 38-F], June 30, 1950 [R. 259-260; Ex. 38-G], and July 31, 1950 [R. 262-263; Ex. 38-H].

During the latter part of August, 1950 appellant came to Mr. Swanson and asked the latter whether he could

⁹In the record the transactions are referred to by the month during which Mr. Swanson withdrew the amount of the deposit from the bank. This was always the month following the date of the salary check.

give him Mrs. Bramblett's salary for three months. Mr. Swanson told appellant that he didn't have that amount of money. Appellant then asked Mr. Swanson to write him out a check for the three months' salary and post-date it. Mr. Swanson thereupon wrote out a personal check for \$1440 [Ex. 38-I], which was the approximate amount of Mrs. Swanson's salary checks for August, September, and October, 1950,¹⁰ post-dated it November 1, 1950, and gave it to appellant¹¹ [R. 263-267]. The usual procedure was followed with regard to salary checks dated November 30, 1950 [R. 269-270; Ex. 38-J] and December 20, 1950 [R. 270-271; Ex. 38-K]. Mrs. Swanson's name came off appellant's payroll effective December 31, 1950 [see Ex. 48].

During the period from September 1, 1949 through December 31, 1950 Mrs. Swanson performed no work whatever for appellant [R. 290-291, 313]. Mrs. Swanson did not even meet appellant until the summer of 1950 [R. 312]. Ruth Dickson was an employee of appellant continuously from August 1, 1949 to August 31, 1950 [see Exs. 28-H and 28-I; see also an alphabetical list of appellant's employees contained in the record which was compiled from exhibits received in evidence—Tr. 314].

From January 1, 1950 through August 31, 1950 Mrs. Dickson worked full time in appellant's congressional

¹⁰Had the salary checks for the three months remained the same, the total would have come to \$1438.92 or $3 \times \$479.64$; however, for some reason the check dated October 31, 1950 was reduced to \$460.64 causing the total for the three months to actually come to only \$1419.92.

¹¹It was clearly established during trial that appellant realized the proceeds of the \$1440 check. Mrs. Gladys E. Dean was an employee of Grove Pharmacy, Pacific Grove, California [R. 357], and her endorsement appears on the reverse side of this check [see Ex. 38-I; R. 367]. She testified that she cashed it at appellant's request and turned the proceeds over to appellant [R. 367-368]. Appellant himself admitted this [R. 461].

office [R. 347]. Mrs. Dickson met Mrs. Swanson only once, during 1950 [R. 348]. Mrs. Dickson at no time saw Mrs. Swanson do any work in the office; did not know of any work that Mrs. Swanson performed for appellant at any time; did not see any reports or messages or correspondence coming from Mrs. Swanson into the office; and did not see or know of any reports, requests for information, instructions, telephone calls, or anything going from the office to Mrs. Swanson [R. 350-351].

C. Appellant's Purported Employment of Olga Hardaway.

Appellant's liability with regard to his purported employment of Olga Hardaway was established at trial chiefly through the testimony of Olga Hardaway¹² [R. 67-182] and John M. Hardaway [R. 183-214]. Mrs. Hardaway first met appellant in approximately September, 1950 at her home in Santa Barbara, California [R. 68]. Her husband, John M. Hardaway, had signed a contract with the Republican Central Committee to handle appellant's campaign for reelection as campaign manager [R. 69, 184]. During the 1950 campaign Mrs. Hardaway was employed with the John M. Hardaway Advertising Agency in a secretarial capacity [R. 69, 184].

During the 1950 campaign Mrs. Hardaway and her husband became very good friends of appellant, and on a number of occasions appellant stayed overnight at their home in Santa Barbara [R. 70, 185]. While there appellant made a number of telephone calls for which he promised to reimburse them [R. 70, 185].

¹²This witness testified under her present name, Olga Rogers [R. 67]; however, she will be referred to in this brief by her name at the time the pertinent events took place, Olga Hardaway [R. 68].

During the campaign appellant had told Mrs. Hardaway that if they ever went to Washington and Mr. Hardaway became his public relations man, he would like to have Mrs. Hardaway work in his office [R. 74]; and sometime before the election [R. 128] at her home in Santa Barbara [R. 73] appellant handed her "hiring papers" [Exs. 7, 19, and 23]¹³ in blank [R. 129] and asked her if she would put her signature to them and that he would file them until such time as she went to Washington [R. 74, 75, 78, 128].

Mrs. Hardaway was placed on the payroll of the Disbursing Office of the House of Representatives effective November 1, 1950 [Ex. 7]. During November, 1950 Mrs. Hardaway did no work for appellant, aside from her duties with the John M. Hardaway Advertising Agency, which was handling appellant's campaign for reelection [R. 81, 186]. Indeed, after election day Mrs. Hardaway became ill and stayed home for the remainder of the month [R. 81]. Nor did appellant do any work for appellant during December, 1950 and January, 1951 [R. 81, 186, 200].

During December, 1950 Mr. Hardaway, appellant, and one Elmarie Dyke formed a partnership for the purchase of a newspaper, the Pacific Grove Tribune [R. 81, 189-190]; and in connection with this venture Mr. and Mrs. Hardaway became indebted to appellant in the sum of approximately \$4,000, signing a note for this amount on December 15, 1950 [R. 82-83, 189-190, 200].

During January, 1951 the Hardaways moved to Pacific Grove, California, Mr. Hardaway preceding Mrs. Hard-

¹³Exhibits 7 and 19 purport to have been sworn to before Sadie Molineu, Notary Public. Sadie Molineu was a Notary Public in the District of Columbia [R. 389]. The first time that Mrs. Hardaway went to the District of Columbia was during 1953 [R. 80, 192].

away [R. 83, 187]. Around February 3, 1951 Mrs. Hardaway started working regularly for the Pacific Grove Tribune at a salary of \$200 a month [R. 83-84, 190-191]. Shortly after this employment commenced Mrs. Hardaway began to take a number of telephone calls for appellant and to perform other miscellaneous duties for him in addition to her work at the newspaper [R. 85-86]. These additional duties continued until the newspaper was sold in November or December, 1951 [R. 87].

During December, 1950 Mr. Hardaway had a conversation with appellant at the Hardaway home in Santa Barbara [R. 189] during which appellant said that he had "something for Olga to sign, and it was in regard to his air travel, and it had to be made out in somebody's name, and he made it out in hers" [R. 189]. During December, 1950 sometime before Christmas appellant presented to Mrs. Hardaway at her home in Santa Barbara her November salary check [Ex. 33-A] and asked her to sign it. Mrs. Hardaway signed this check and returned it to appellant¹⁴ [R. 88-92, 135-137]. At the time of signing Mrs. Hardaway had never worked for the United States Government and had never seen a Government check previously [R. 91-92].

Mrs. Hardaway's December salary check [Ex. 33-B] in the amount of \$95 was received by mail; and Mrs. Hardaway applied it to their business account, believing

¹⁴This check [Ex. 33-A] as well as checks dated October 31, 1951 [Ex. 33-G] and November 12, 1951 [Ex. 33-H] bear the endorsement of the Sergeant-at-Arms, House of Representatives [Ex. 47, p. 104]. The Sergeant-at-Arms testified that in his disbursing function he operated a sort of small bank for Members of the House [Ex. 47, p. 100] and that it was possible for a member to cash a check there without himself endorsing it [Ex. 47, p. 105].

it was to offset the charges on their telephone bill [R. 93-95, 138].

Appellant presented Mrs. Hardaway's January, February, and March checks [Exs. 33-C, 33-D, and 33-E] to her for signature in the prescription room of the Grove Pharmacy in Pacific Grove during the latter part of April or the first of May. The checks were presented face down on the counter. After Mrs. Hardaway signed the checks appellant picked them up and kept them¹⁵ [R. 95-97, 142-144]. Mrs. Hardaway's April check [Ex. 33-F] was signed in the same manner, appellant retaining it¹⁶ [R. 98, 148-151].

When appellant was out in California in May, 1951, he told Mrs. Hardaway that he realized that she had been doing some "extra-curricular" work for him and that he was placing her name on his payroll to compensate for her efforts [R. 99, 115]. Thereafter, Mrs. Hardaway received her salary checks dated October 31, 1951 and November 1951 by mail¹⁷ and she realized the proceeds of these checks [R. 98-102].

Appellant presented to Mrs. Hardaway for signature her salary check dated October 31, 1951 and November 12, 1951 [Exs. 33-G and 33-H] at the newspaper office.

¹⁵Exhibits 33-D and 33-E bear the second endorsement of Dyke's Grove Pharmacy, although this endorsement was apparently omitted inadvertently from Exhibit 33-C. Appellant was at one time a partner in this pharmacy [R. 396-397].

¹⁶Exhibit 33-F bears the second endorsement "Peninsula Furniture Exchange The Auction Studio W. R. La Porte Pearl M. La Porte." Appellant and the La Portes were very good friends [R. 398].

¹⁷The Permanent Mailing Order for Olga Hardaway dated May 29, 1951 [Ex. 27] shows that only the checks for May, June, July, August, and September were mailed [see also Ex. 47, p. 79]. The remaining checks were undoubtedly picked up by or on behalf of appellant.

Appellant retained these checks after Mrs. Hardaway had signed them, and the latter realized none of their proceeds [R. 102-103, 151-163]. Mrs. Hardaway's salary check dated November 30, 1951 was delivered to her by appellant and she realized its proceeds [R. 103-104].

On December 8, 1952 Mrs. Hardaway received a telephone call from appellant during which appellant said that his records were being investigated and that she would undoubtedly be contacted by the F.B.I. and that she "knew what to do" [R. 116].

On the morning of December 31, 1952 Mr. Hardaway received two telephone calls from appellant, both from Washington, D. C.; one around ten o'clock and the other around eleven [R. 193-194]. During the first conversation appellant asked Mr. Hardaway how things were in the district and the latter replied that nothing actually had happened but things were getting hot, that the F.B.I. was investigating [R. 197-198]. Appellant's answer to that was "well, we understand each other on this, and just don't worry about it, I'll fix it" [R. 198]. Mr. Hardaway urged appellant not to fix it but get an attorney and let him do the fixing [R. 198]. Appellant thereafter said "I think this wire is tapped, I will call you back later" [R. 198].

During the second telephone conversation appellant said that he had talked to his attorney, and that everything was all understood, that the checks were payments on the note. Mr. Hardaway pointed out that some of the checks, or at least one of them couldn't have been payment on the note because the note didn't exist then. Appellant said "that's all right, it is just your word against theirs" [R. 199-200].

D. Appellant's Purported Employment of Lillian South.

The liability of appellant with respect to his purported employment of Lillian South was established primarily through the testimony of Mrs. South [R. 13-66]. Mrs. South first met appellant late in the year 1945 [R. 14-15]. John F. South, the husband of Mrs. South who is now deceased, was appellant's campaign manager for the 1946 election and Mr. and Mrs. South worked as a team in the campaign [R. 15-16]. After the election Mr. and Mrs. South went to Washington with appellant, arriving there on January 1, 1947 [R. 16]. Upon arrival Mr. South was employed by appellant as his Executive Secretary [R. 16-17].

Shortly after reaching Washington Mrs. South had a conversation with appellant during which the latter told Mrs. South that there was a fund for Clerk hire and it had not been used up, that her name was placed on the payroll and she was to do a certain amount of work, but a portion of her salary was to come to her and the rest of it was to be returned to the office, to appellant; that she was to retain \$15.01 of her check and \$95 was to be returned to appellant [R. 17-18].

Thereafter Mrs. South signed "hiring papers" [Exs. 12, 17, and 21] and received monthly pay checks as an employee of appellant [R. 17-21]. When she received her salary check for January, 1947 in the amount of \$103.02, she cashed it, retained approximately \$8 of the proceeds, and placed the remainder in an envelope and gave it to Mr. South¹⁸ [R. 22-23]. Similarly, when Mrs. South

¹⁸The witness testified "I placed it in an envelope and gave it to Mr. South, to give to Mr. Bramblett" [R. 23-24]. The District Court struck the phrase "to give to Mr. Bramblett" [R. 23-24]; however the witness' purpose in giving the envelope to Mr. South is clear from the prior conversation she had with appellant [R. 17-18].

received her salary checks for each of the months of February, 1947 [Ex. 30], March, 1947 [Ex. 36-A], April, 1947 [Ex. 36-B], May, 1947 [Ex. 36-C], and June, 1947 [Ex. 36-D] each in the amount of \$110.01, she cashed the checks, retained \$15.01 of the proceeds of each check, and placed the remainder in an envelope and took it to appellant's office [R. 26-27, 27-28, 29-30, 30-31, 31]. In at least one instance Mrs. South gave the envelope to appellant himself [R. 49]. On other occasions it was sent by Mr. South [R. 48, 49] or placed in appellant's desk drawer [R. 50]. Mrs. South realized all of the proceeds of her salary checks for the months of July, 1947 [R. 31-32], August, 1947 [R. 32], September, 1947 [R. 33], October, 1947 [R. 33], November, 1947 [R. 33], and December, 1947 [R. 33].

Mrs. South remained in the District of Columbia from January 1, 1947 to late July, 1947 [R. 37]. During this period she did no work as a clerk in the office of appellant although she assisted her own husband in the evenings editing stories and speeches [R. 46] and performed other occasional duties for appellant [R. 47]. From late July through December, 1947 Mrs. South did perform work for appellant as his clerk, either in his Pacific Grove office [R. 39] or in his District of Columbia office [R. 39-40].

E. Other Evidence of a General Scheme by Appellant to Divert the Clerk-Hire Allowance to His Own Use.

In addition to the witnesses heretofore mentioned, the testimony of Vivian DeWitt¹⁹ [R. 410-459] also shows a general scheme of appellant to divert the Clerk-Hire Al-

¹⁹This witness testified under her married name, Vivian DeWitt Cohan [R. 410]. In connection with her employment, however, she used her maiden name, Miss Vivian DeWitt [R. 411]. The latter name will be used in this brief.

lowance to his own use. This testimony is clearly relevant (*Castle v. Bullard*, 64 U. S. 172, 187 (1859); *Worthington v. United States*, 64 F. 2d 936, 940-941 (7th Cir. 1933); *Sacramento Suburban Fruit Lands Co. v. Elm*, 29 F. 2d 233 (9th Cir. 1928); *Knudsen v. Domestic Utilities Mfg. Co.*, 264 Fed. 470 (9th Cir. 1920)).

At the time of trial Miss DeWitt had been employed on "Capitol Hill" more than fifteen years [R. 411]; and she was employed as a full time clerk in the congressional office of appellant from January 3, 1947 through October 31, 1949 [R. 412-414]. When appellant interviewed Miss DeWitt prior to her employment he told her that at the time he could allow her \$2,400 a year basic salary; however, by the end of the first six months she would have a substantial increase. At the end of six months, however, Miss DeWitt did not get the promised salary increase [R. 421-422].

Between the middle of July, 1947 and the first of January, 1949 Miss DeWitt had several conversations with appellant, during which she told appellant that she felt that the increase was due her in view of the duties she performed and the promise given her originally and that she would like to have an increase in salary [R. 422-423]. Appellant told her that he could not do it at that time [R. 423-424].

During March of 1949 Miss DeWitt had a conversation with appellant during which she told him that she would like to have an increase in salary which would help in the eventuality of retirement benefits, and also that it was embarrassing to hold the type of position that she was holding when the other people and friends were being compensated in accordance with their like duties, and for the Clerk-Hire of the House of Representatives to be open

for public inspection and public knowledge that she was still working for less than typist's salary. Appellant said that he would think it over [R. 424-425].

A few days later appellant called Miss DeWitt into his office. When she entered appellant asked her to close the inter-office door and be seated [R. 425]. The following conversation then took place [R. 426]:

“A. He asked me if I had any cash or could I get ahold of any cash, and I asked why, and he said, well, could I get the amount of something over \$5,000 and give it to him. I—\$5,000. I said ‘Well, I think I can. Why?’ And he said ‘if you will give me this amount then I will put you on the clerk hire payroll at \$5,000 basic salary.’ I told Mr. Bramblett that I felt that that wasn’t right, that it was against the law, and termed a ‘kick back.’ He firmly told me that it was not that way at all, nothing like it. I said ‘Well, this in turn would be a kick ahead’ and I still didn’t think it was legal. And he told me to think it over for a day or two, and let him know.”

Two or three days later appellant mentioned to Miss DeWitt that she had not reported to him about the matter they were talking about in his office and asked for her decision. She told appellant she would not do it [R. 426-427].²⁰

²⁰The only salary increase received by Miss DeWitt during her employment was for \$100 effective August 1, 1949 [see Ex. 28-I; see also the conversation between appellant and Miss DeWitt concerning this \$100 increase, R. 428]. A chart showing the comparative salaries of appellant's employees as of each date of hire or pay change is contained in the record [Tr. 316-317].

F. The Clerk-Hire Allowance Belongs to the People of the United States.

While Congress allowed its members complete freedom in fixing the salaries of its employees and removing them at will (Title 2, U. S. Code, Secs. 60g and 92), and while there was not in existence a statute known to appellee specifying the duties which must be performed by an employee of a Member of the House of Representatives; this did not operate as a license for appellant to represent to the Disbursing Officer of the House of Representatives that certain persons were employed as clerks when in fact they were not; nor did it authorize appellant to divert the Clerk-Hire Allowance to his own use (See *Belvin v. United States*, 260 Fed. 455 (4th Cir. 1919)).

The Clerk-Hire Allowance belongs to the people of the United States and not to the Member of Congress;²¹ and the people are entitled to a *quid pro quo* for its expenditure.²² Appellant, as a Member of the House of

²¹Page 6 of Defendants' Exhibit "J," a pamphlet entitled Salary and Allowances, Members of Congress, House of Representatives, 83rd Congress, prepared by Lyle O. Snader, Clerk of the House of Representatives reads in part:

"... Appointments of clerks are limited to seven, and such appointments cannot be made retroactive to a date prior to a current month. The allowance is paid in monthly installments. *It is not cumulative and any portion of a monthly allowance not used reverts automatically to the United States Treasury.*" (Emphasis added.)

This exhibit, while published after the period here involved, was offered on the basis that its essential provisions had not changed [R. 512-513].

²²The purported employees of appellant were not officers of the United States [compare: *United States v. Grant*, 237 F. 2d 511 (7th Cir. 1956)]. The distinction between officers and employees of the United States has long been recognized [*Burnap v. United States*, 252 U. S. 512, 516 (1920); *United States v. Smith*, 124 U. S. 525 (1888); *United States v. Mouat* 24 U. S. 303 (1888)].

Representatives, occupied a public office (*Pope v. Commissioner of Internal Revenue*, 138 F. 2d 1006, 1009 (6th Cir. 1943); 67 C. J. S. Officers, Secs. 1-3); and a public office is a position of trust (*Tool Company v. Norris*, 2 Wall. (69 U. S.) 45, 59 (1864); *State v. Eaton*, 133 P. 2d 588, 591, 114 Mont. 199 (1943); 67 C. J. S. Officers, Secs. 1, 6). As set forth in 67 C. J. S. Officers, Sec. 6, at pages 117-118:

“Public offices are not held by contract or grant, and are not deemed created for the benefit of the individuals who for the time being occupy them, *or for the profit, honor, or private interest of any one man, family, or class of men. They are considered, rather, as public trusts or agencies to be held and administered entirely for the benefit and in the interest of the people.*” (Emphasis added.)

II.

THE GOVERNMENT WAS NOT BARRED BY STATUTES OF LIMITATIONS FROM OBTAINING THE RELIEF GRANTED BY THE DISTRICT COURT.

A. Relief Under the False Claims Act.

No relief was granted by the court below *under the False Claims Act* with respect to appellant's purported employment of Lillian South, since appellee conceded that such relief was barred [R. 9]. Conversely, there can be no serious contention that recovery under the False Claims Act was barred as to appellant's purported employment of Olga Hardaway; since the initial Clerk-Hire Allowance form relating to Mrs. Hardaway is dated November 1, 1950 [See Ex. 7], while the original complaint herein [Tr. 2-4] was filed on October 31, 1956, clearly within the 6-year period.

The only debatable issue as to limitations under the False Claims Act, therefore, relates to appellant's purported employment of Margaret M. Swanson. Although the Clerk-Hire Allowance form for Mrs. Swanson is dated August 27, 1949 and she was placed on the payroll of the Disbursing Office of the House of Representatives effective September 1, 1949 [See Ex. 48]; the court below found that the false claim which appellant presented and caused to be presented with respect to his purported employment of her "was a continuing one, commencing when the Clerk-Hire Allowance form for Margaret M. Swanson was submitted and continuing until her name was removed from the payroll." [Findings of Fact VII, Tr. 367]. The District Court concluded that appellee was not barred by the limitations contained in Title 31, U. S. Code, Section 235, from recovering forfeitures and double the amount of damages which the United States sustained on and after November 1, 1950 by reason of appellant's purported employment of Margaret M. Swanson [Con. of Law V and VII, Tr. 371, 372]; but that appellee was barred from recovering double damages "sustained before November 1, 1950, the original complaint herein having been filed on October 31, 1956" [Con. of Law VI, Tr. 372].

The conclusions reached by the court below are in accord with the decision of the Court of Appeals for the District of Columbia Circuit in *Bramblett v. United States*, 231 F. 2d 489 (Dist. Col. Cir. 1956), cert. den. 350 U. S. 1015, involving an appeal from the conviction of appellant herein for violation of Title 18, U. S.

Code, Section 1001. The court there concluded with respect to Mrs. Swanson's employment that (p. 491):

“* * * A continuing crime of falsification by a scheme is thus charged and proved, and *the period of limitations did not begin to run until the scheme ended * * **” (Emphasis added.)

While the language of Title 18, U. S. Code, Section 1001 is different from that of Title 31, U. S. Code, Section 231, the limitations question should be treated in the same manner. Once a member of the House of Representatives files a Clerk-Hire Allowance form designating a person as his clerk and authorizing him to receive compensation, such person continues on the payroll until there is a revocation in some manner by the Member [Ex. 47, pp. 64-65]. The form therefore constitutes a continuing claim for monthly salary payments.²³

B. Restitution of Monies Wrongfully Received.

As to Margaret M. Swanson a large portion of the relief granted appellee consisted of monies wrongfully received by appellant, monies which belonged to the United States; and as to Lillian South all of the granted relief was of this nature.²⁴ The United States is not barred

²³The following hypothetical example favors the construction contended for by appellee: A contrives a fraudulent scheme whereby on September 1, 1949 he submits to the Disbursing Officer of the House of Representatives a Clerk-Hire Allowance form effective September 1, 1949; and in furtherance of this scheme the designated employee commences work on September 1, 1949 and continues to work until September 1, 1955, thereafter ceasing to work but continuing to receive salary payments until September 1, 1959.

²⁴The manner in which damages were computed as to each of the three alleged employees is contained in the record: Olga Hardaway [Tr. 287-288]; Margaret M. Swanson [Tr. 295-297]; Lillian South [Tr. 299-300].

from recovering such monies at any time (*United States v. Summerlin*, 310 U. S. 414 (1940); *United States v. Wurts*, 303 U. S. 414, 416 (1938); *Shutt v. United States*, 218 F. 2d 10, 12 (5th Cir. 1954); *United States v. Borin*, 209 F. 2d 145, 148-149 (5th Cir. 1954), cert. den. 348 U. S. 821; *United States v. Silliman*, 167 F. 2d 607, 611 (3d Cir. 1948), cert. den. 335 U. S. 825; *United States v. First Nat. Bank of Prague*, 124 F. 2d 484 (10th Cir. 1941); *United States v. Scott*, 139 Fed. Supp. 921, 922 (S. D. N. Y. 1955); *United States v. Hicks*, 137 Fed. Supp. 564, 566 (N. D. Tex. 1956); *United States v. Utica Meat Co.*, 135 Fed. Supp. 834 (N. D. N. Y. 1955)).

CONCLUSION.

Wherefore, for the reasons set forth above, it is respectfully submitted that the judgment of the District Court should be affirmed.

Respectfully submitted,

LAUGHLIN E. WATERS,

United States Attorney,

RICHARD A. LAVINE,

Assistant U. S. Attorney,

Chief of Civil Division,

JAMES R. DOOLEY,

Assistant U. S. Attorney,

Attorneys for Appellees.

